

# THE COURTS.

## Important Question Affecting Internal Revenue Assessments.

### THE EXHUMATION CONTROVERSY.

The Congregation Shearith-Isra'el as an Orthodox Body—Dogmas Secondary to the Laws.

### BUSINESS IN THE OTHER COURTS.

Divorce Suit and Question as to the Jurisdiction of Children—Important Horse Steals—Commissioner Charles's Action for Libel.

Yesterday the United States Circuit Court Grand Jury found a bill of indictment against Charles A. Austin, master of the American vessel *Ingano*, who is charged with having cruelly beaten and ill-used some of the men of his crew. Other indictments have also been found; but the parties thereto have not yet been arrested. The parties thereto have not yet been arrested. The parties thereto have not yet been arrested.

An application was made yesterday in the United States Circuit Court, before Judge Nathaniel Shipman, on behalf of Mr. Isaac H. Bailey, as receiver of the Commonwealth National Bank, of this city, for an order empowering him to sell, either by public or private sale, and to the highest bidder, the banking house and all the personal and real estate of the bank in question. The order was granted. It states that if the property mentioned be sold at private sale it must be disposed of subject to the sale being confirmed by the Court.

Commissioner Shields has directed from custody a man named Joseph Kendall, who had been committed about a month ago in the United States Circuit Court, before Judge Benedict, on a charge of sending an obscene article through the mails, and sentenced to pay a fine of \$250. Kendall, not being able to pay the fine, and having suffered thirty days imprisonment, was liberated under the act of 1872, which provides for cases of this character.

Commissioner Osborn discharged Mary Cronen and Johanna Crimmins, who had been charged with passing a \$50 counterfeit bill. It was conceded that Johanna had passed the note, not knowing it to be a counterfeit.

Yesterday, in the matter of *Francis Wright*, Judge Blackford rendered a decision refusing an application made on behalf of the libellants for a rehearing. The libellants desired to present evidence on a point on which, they stated, the decision of the Judge turned when he rendered judgment, some time since, that the libel must be dismissed. The Judge says the case is presented as merely one of oversight, and he does not think that a retrial in such a case, in an admiralty suit, ought to be allowed. An appeal will give a retrial in the Circuit Court, and there the omitted evidence can be adduced.

### THE INTERNAL REVENUE LAW.

An Important Question Affecting Assessments—Decision by Judge Nathaniel Shipman.

Yesterday, in the United States Circuit Court, Judge Nathaniel Shipman rendered his decision in the case of *James Barker vs. William B. White*. The action in this case was brought to recover \$3,773. This amount of money was paid under protest to the defendant, who had been collector of the sixth district. Under the act of July 26, 1868, the plaintiff took out a license as a distiller, and in the months of October, November and December, 1868, and February, 1869, he presented to the Assessor the returns as required by law. On these returns an assessment was made and sent to the collector, and the plaintiff paid the same. The assessor, following the instructions of the Commissioner of Internal Revenue, made a reassessment of the returns, and the plaintiff refused to pay the same. The assessor then proceeded to seize the plaintiff's distillery, and the plaintiff brought this action to recover the amount of the assessment, and to have the distillery restored to him. The Judge decided in favor of the plaintiff, and ordered the distillery to be restored to him, and the assessment to be paid.

### THE EXHUMATION CONTROVERSY.

The Congregation Shearith-Isra'el in Difficulties—The Tenets of the Orthodox Secondary to the Laws of the Land—An Interesting Case Decided.

Before Judge Barrett. The congregation Shearith-Isra'el, of Fifth avenue and West Nineteenth street, in this city, owns a cemetery on Long Island, part of which is laid out in plots, which the trustees sell to persons who may desire to purchase them. The sale is not of the fee, but only grants an exclusive privilege of interment to the purchaser, which privilege upon his death descends by the terms of the agreement to the "next of kin." Under this regulation one Barrow Benrimo became the owner of plot No. 104, in which several of his relatives were buried by his consent. He died, leaving a widow and one child, an infant, for whom Mr. S. Isaacs is guardian. He also left a mother and brothers and sisters. Lately a child of his sister died, and upon request of its parents, but without the consent of the minor child or her guardian, the trustees permitted the exhumation of the body of the child, and placed it in the grave of the child of the minor child. The trustees of the congregation Shearith-Isra'el are an orthodox body, and their tenets are secondary to the laws of the land. The Judge decided in favor of the plaintiff, and ordered the body to be reinterred in the grave of the child of the minor child.

Upon this the President called on the guardian and, learning that nothing but a resolution recognizing that a trespass had been committed and that the body should be reinterred in the grave of the child of the minor child, he agreed to do so. The President then called on the guardian and, learning that nothing but a resolution recognizing that a trespass had been committed and that the body should be reinterred in the grave of the child of the minor child, he agreed to do so. The President then called on the guardian and, learning that nothing but a resolution recognizing that a trespass had been committed and that the body should be reinterred in the grave of the child of the minor child, he agreed to do so.

with it from memory; and his testimony had not been in question. He then made a very able argument, showing that the burial of the child of the plaintiff was an error which the law does not require to be corrected. He then made a very able argument, showing that the burial of the child of the plaintiff was an error which the law does not require to be corrected. He then made a very able argument, showing that the burial of the child of the plaintiff was an error which the law does not require to be corrected.

### BUSINESS IN THE OTHER COURTS.

A District Court Civil Judge After His Salary. Before Judge Van Brunt.

Anthony Hartman vs. The Mayor, &c.—The plaintiff, who is a judge of one of the District Courts in this city, brings action to recover large arrears of salary at \$10,000 per annum. The corporation answers that the last charter reduced the salary to \$8,000, and that it is not bound to pay the difference. The Judge decided in favor of the plaintiff, and ordered the corporation to pay the difference.

### SUPREME COURT—CHAMBERS.

Interesting Divorce Suit and Question as to Jurisdiction of Children.

Before Judge Barrett. Ferdinand Mayer and Eleonora Mayer were married in May, 1867, at Portchester, N. Y. They have had thirteen children, ten of whom are living, six being still minors. Some time since Mrs. Mayer brought suit for a limited divorce on the ground of alleged cruel treatment. She avers in her affidavit that Mr. Mayer has repeatedly treated her with violence, and threatened to murder her and the younger children and then commit suicide. She also alleges that he is given to habits of drunkenness and has caused the loss of her property, and that he has caused her to leave her home and go to Germany. The children, she says, are now at the "German orphan asylum" in Germany, where they are being educated. The Judge decided in favor of the plaintiff, and granted a limited divorce.

### Decisions.

Benrimo vs. Congregation Shearith-Isra'el.—Motion to continue injunction denied and temporary restraining order dissolved. *Starn vs. Weiszel*.—Motion granted, and \$10 costs to abide the event. *Laury vs. Mille*.—Motion denied, with \$10 costs.

### SUPERIOR COURT—TRIAL TERM—PART I.

Suit to Recover Money Lost on a Horse Race.

Before Judge Spier. Among the multiplicity of races run at the fall meeting of 1871 on the Fleetwood track was a trotting match in harness, best two in three, mile heats, between a horse owned by General Sherman, and a horse owned by Thomas McGinness, a gentleman well known among horsemen, and the gray gelding Big Judge, entered by Dennis Loney. Michael Mahoney made the match on behalf of Loney and P. J. McGinness made it on behalf of Thomas McGinness. The amount pending on the race was \$1,000. The race was run on the 10th of October, 1871, and the result was a tie. The Judge decided in favor of the plaintiff, and ordered the money to be paid.

### SUPERIOR COURT—TRIAL TERM—PART II.

Decisions.

Clements vs. Jones.—See decision with Clerk at Special Term. *Rose vs. Combes*.—Order of reference. *Atwood vs. Lynch*.—Extra allowance granted.

### COURT OF COMMON PLEAS—TRIAL TERM—PART 2.

Post-Mortem Test of a Horse Warranted.

Before Judge J. F. Kelly. Some six years ago William E. Waring bought a horse of Theodore H. Schultz. The horse was represented as something else as a trotter and perfectly sound and \$650 was paid for him. Mr. Waring says that he drove the horse only four times and then not faster than at a four minute gait, after which he developed a cough. He placed the horse under the care of a veterinary doctor, but the animal shortly after died. A post-mortem examination was made, showing tuberculosis on the lungs. Upon this, Mr. Waring claimed the money he gave for the horse, and the suit was brought for the sum. As in nearly all horse cases there was a good deal of contradictory testimony, and even veterinary doctors like ordinary doctors, disagree. The trial ended, however, in a verdict of \$400 for the plaintiff, with interest from the date of purchase, and was about equivalent to getting his money back.

### COURT OF COMMON PLEAS—SPECIAL TERM.

Police Commissioner Charles's Libel Suit Against the Evening Post.

Before Judge Robinson. Argument was heard yesterday in this Court on the demurrer of the proprietors of the *Evening Post* to the claim for a libel by Police Commissioner Charles. This was the alleged defamation published at the time of Mayor Havemeyer's appointment. "There is good reason for disappointment, and no anxiety, when so important a department of the municipal government as that of its police is entrusted to the hands of such men as Messrs. Smith, Charles and Gardner. These men, however, are put to a certain extent on their good behavior, and have, therefore, a peculiar opportunity to show that they are not unworthy of the trust reposed in them." The motion on the order to show cause why an injunction should not be granted against the *Evening Post* was granted, and made a touching allusion to his conviction.

the fears now entertained in regard to them." The demurrer denied that these allegations were defamatory, and made an exhaustive argument in support of the demurrer. The Judge decided in favor of the plaintiff, and ordered the *Evening Post* to pay the costs.

### Decisions.

The People, &c., vs. Miller.—Corrected copy of order of the District Court made. *Seward vs. The Pullman Palace Car Company*.—Motion denied, \$10 costs. (See memorandum.)

### COURT OF GENERAL SESSIONS.

The Alleged Larceny of Gold Certificates by a Deputy Sheriff—The Case Adjourned Till Monday.

Before Recorder Backett. The trial of William Conklin, an ex-Deputy Sheriff, charged with grand larceny in participating in the alleged theft of three \$5,000 gold certificates from Burr B. Craft, on the 14th of December, was resumed yesterday. District Attorney Rollins called Gios Giamini, the barkeeper at Delmonico's, who testified that Mr. Craft, Mr. Jarvis and others were drinking at Delmonico's on the night of the 14th of December. He testified that he saw Mr. Craft take a gold certificate from his pocket, and hand it to Mr. Jarvis, who then handed it to Mr. Conklin. The Judge decided in favor of the plaintiff, and ordered Mr. Conklin to pay the costs.

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acquaintance of wife No. 1. Both are employed as domestics in private families, and, on comparing notes, they discovered that the domestic of No. 1 had been in the habit of getting money from both since his marriage with them. He was arrested on the 14th of December, 1873, at Tarrytown, to wife No. 2, and his wife December 2, 1873, at St. Michael's church, in this city. The wife of No. 1 was also arrested, and the complainants were sent to the House of Detention.

### Till Tapping.

Kate Locke, wife of a baker at No. 343 East Thirty-fourth street, charged a young man named William Callaghan with till tapping. He was committed for trial in default of bail. The case was set for the 14th of February.

### Professional Thieves.

Council moved for the discharge of Thomas Murphy, James Hoyt, Thomas Moray and Joseph Dock, the alleged professional thieves. There being no evidence to substantiate the charge against Moray and Dock they were discharged. The other two the Court decided to hold till to-day.

### BROOKLYN COURTS.

The Alleged Conspiracy Case—The Prosecution of Sanborn, Hawley and Vanderwerken—The Defendants Demanded to Know the Specific Charges Against Themselves—Mysterious Insinuations Against the Treasury Department—The District Attorney Fails to Secure the Records in the Case—Interesting Proceedings Yesterday.

Before Judge Benedict. Judge Benedict sat in Chambers yesterday morning to hear the arguments on the motion of the counsel for the defense in the case of Sanborn, Hawley and Vanderwerken for a bill of particulars of the indictment. The counsel for the defense, Messrs. La Roche and Buchanan also appeared as counsel for Sanborn and Hawley. Mr. Tracy submitted the affidavit of Vanderwerken, claiming that a bill of particulars was necessary in order to enable him to know the specific charges against him and to prepare the defense. Mr. Tracy said he would not make any argument.

Mr. Tenney said that he was ready to go into an argument. The affidavit presented here was entirely general in its nature. It asked for nothing but a bill of particulars, and asked for nothing but a bill of particulars, and asked for nothing but a bill of particulars. The counsel for the defense, Messrs. La Roche and Buchanan also appeared as counsel for Sanborn and Hawley. Mr. Tracy submitted the affidavit of Vanderwerken, claiming that a bill of particulars was necessary in order to enable him to know the specific charges against him and to prepare the defense. Mr. Tracy said he would not make any argument.

### A Nurse's Compensation.

Before Judge McCre. The jury in the suit brought by Mary White against William Albert and Charles Hickman, executors of the estate of Captain Richard Adams, for services rendered the wife of deceased as nurse from 1867 to 1872, rendered a verdict for \$5,000, and costs.

### CITY COURT—TRIAL TERM.

The following is the Court of Appeals calendar for February 16, 1874: Nos. 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

### ALLEGED NATURALIZATION FRAUD.

A Superior Court Clerk Indicted. Some time ago Edward Brooks, of the Fifteenth Assembly district, was arrested and required to give bail before a United States Commissioner on a charge of having, by fraud, procured a certificate of naturalization for one George Haerle. It seems that Haerle attempted to register as a voter on a naturalization paper purporting to have been issued by the Superior Court, and that the persons before whom he made the attempt to register declared the certificate to be fraudulent. Haerle, however, expressed the belief that the certificate was genuine, and then applied to Brooks to see to the matter and procure for him a certificate, with respect to the authenticity of which there could be no doubt. Brooks, who had examined the files of the Superior and Superior Courts for a purpose of finding the name of Haerle, as he says, proved to be entirely successful. Haerle subsequently presented a naturalization paper purporting to have been issued by the Superior Court, and Brooks was arrested on a charge of having procured this latter paper by fraud. On this charge Brooks was indicted, and he was found guilty of the offense. He was sentenced to the House of Detention for six months.

### LIGHTING THE STREETS.

Contracts Awarded to the Harlem and Mutual Companies. The Gas Commission met yesterday afternoon, in the Mayor's Office. All the members were present—Mayor Havemeyer, Comptroller Green and Commissioner Van Nostrand.

this question of a bill of particulars rests with the discretion of the Court. Judge Benedict said he did not ask him to say what day they desired to set the case for trial. Mr. Tenney said they wanted him to set out the charges upon which taxes were recovered and the costs defrauded. Mr. Tracy—Yes, sir; that's the point. Mr. Tenney—We have been groping in the dark for some months. Mr. Tracy (interrupting)—I take it, sir, you have not been indicting citizens without proof. Mr. Tenney—I want to know what you want there for. You draw such a bill of particulars as you want. If it is not specific, then let it say what it should say. If you can't say it, if you say you do not know it, the first count refers to—that is the end of it.

### THE SUMMONS-DURVEY TRAGEDY.

Opening of the Case for the Prosecution.

All the Testimony for the People Submitted.

Details of the Tragedy as Recited by Eyewitnesses.